

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 693 of 2000
with
SPECIAL CIVIL APPLICATION No 694 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NARSING LUNGA SANGALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR MA KHARADI for Petitioner

MR KT MEHTA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/03/2000

COMMON ORAL JUDGEMENT

#. Commissioner of Police, Rajkot City, Rajkot, passed an order on April 28, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining

the petitioners-detenues under the provisions of the PASA Act.

#. The detaining authority took into consideration various offences registered against the detenues. The authority also considered the statements of anonymous witnesses, whose identity has not been disclosed in exercise of powers under section 9(2) of the PASA Act. The authority came to a conclusion that the petitioners are dangerous persons as defined under the PASA Act and are required to be immediately prevented from pursuing their activities, which are detrimental to public order. The detaining authority also observed that resorting to less drastic remedy in the form of proceeding under sections 57 and 56 (a) & (b) are not possible to be resorted to and hence the detention under the PASA Act.

#. The petitioners challenge the detention on various grounds, one of which being consideration of an irrelevant factor in the form of considering the proceeding under section 57 of the Bombay Police Act by way of a less drastic remedy. When the petitioner is detained as dangerous person, while considering possibility of resorting to section 57 of the Bombay Police Act, conviction under is expected, which is not the case against the detenues. The authority has, therefore, considered irrelevant aspect which should be considered as sufficient to vitiate the detention.

#. Mr. Kharadi has relied upon the above ground for assailing the order of detention and has placed reliance on the decision of this Court in Special Civil Application No. 2502/99 in the case of Gafarbhai Ganibhai Modan v. Commissioner of Police, decided on December 14, 1999.

#. Mr. K.T. Dave, learned AGP has vehemently opposed this petition. According to him, the detaining authority has considered all available alternative remedies including section 57 of the Bombay Police Act and it cannot be considered as non-application of mind on the part of the detaining authority and the petition may, therefore, be dismissed.

#. Having regard to rival side contentions, it may be noted that the proceeding under section 57 of the Bombay Police Act can be resorted to only if there are at least two convictions under either the Bombay Prohibition Act or Prevention of Gambling Act or a conviction for Chapter XII, XVI or XVII of IPC. In the instant case, if the grounds of detention are considered, there is no

reference whatsoever to any offence under the Prevention of Gambling Act and/or Bombay Prohibition Act. The offences under IPC are pending investigation. The petitioners have been branded as "dangerous persons" and therefore, consideration of proceedings under section 57 of the Bombay Police Act by way of less drastic remedy is an irrelevant factor which has been considered by the detaining authority which reflects that consideration of this less drastic remedy is only mechanical proceduring by the detaining authority. The subjective satisfaction of the detaining authority, therefore, that detention under the PASA Act is the only remedy that can be resorted to for immediately preventing the petitioner from pursuing his illegal and anti-social activities, is based on a factor which cannot be considered as relevant. The orders are passed on the basis of the factor which is not relevant and therefore, the orders would be rendered bad in law so also the detention. The petitions therefore, deserve to be allowed on this count.

#. These petitions are therefore allowed. The impugned orders of detention passed on April 28, 1999 by Commissioner of Police, Rajkot City, Rajkot are hereby quashed and set aside. The detenue - Narsing Lunga Sangala in Spl. C.A. No. 693/2000 and detenue -Sanjay Alias Sanju Manabhai Mohaniya in Spl.C.A. No. 694/2000 are hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute in both the petitions with no order as to costs.

[A.L. DAVE, J.]

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